

PART 17

SPECIAL CONTRACTING METHODS

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SUBPART 17.1 - MULTIYEAR CONTRACTING

17.103-1 General.

(b)(iii) The responsibility for making the determination required by DFARS 217.103-1(b)(iii) is delegated to the Commander, DRMS, with power of redelegation to the Director, Directorate of Contracting (DRMS -P), for contractual actions not exceeding \$10 million in total procurement value and for which the cancellation ceiling does not exceed \$500,000. The delegation is unlimited for multiyear determinations when a cancellation ceiling of \$0 is included.

SUBPART 17.2 - OPTIONS

17.202 Use of options.

(90) The requirements of DFARS subpart 217.74 and subpart 17.74 shall be met for surge, emergency, services or other options which are undefinitized at time of exercise by the Government, i.e., an undefinitized option (UO).

17.203 Solicitations.

(a) Highlight the inclusion of an option provision in a solicitation by a cross-reference to the option in the price schedule. The option shall require a positive acknowledgment by the contractor (e.g., annotation of its option price). Under no circumstances shall an option procedure be used which results in inclusion of an option clause in any contract due to failure of the offeror to explicitly signify the unacceptability of the provision or counteroffer a different price for the option.

(b) The requirements of 15.804-2(a)(1) shall be addressed when stating the basis of evaluation.

(d) When a separately priced option quantity or period is permitted in a solicitation which also includes an economic price adjustment (EPA) or similar repricing provision applicable to the same option quantity or period price(s) for the same item(s) of supply or services, the contracting officer shall preclude potential overpricing, usually by providing for a price buildup in the schedule (see 52.214-9001) from mutually exclusive portions of the (basic and option) price subject to EPA and the firm fixed price portions. The firm fixed price portion of the option price may exceed the comparable portion of the basic award price (see 52.217-9001). However, "overlap" (i.e., where any portion of the option quantity or period price is also covered by an EPA clause) is permitted only when the contracting officer documents reasons why overpricing will not occur and utilizes a provision which requires offering of prices for the firm fixed price portion of the quantity or period prices which are no higher than that for the basic contract (see also 16.203-3(93)).

(f) Such option price restriction may be used in other exceptional circumstances where fully justified (FAR 17.203(f)) by documentation included in the acquisition plan.

(g) The approval cited in FAR 17.203(g)(2) should also be included in the acquisition plan. The option price restriction shall be conspicuously included in Section M of the solicitation. The cautionary notice (FAR 17.203(g)(1)) shall also be included in Section M.
17.204 Contracts.

(e) The total of the basic and option periods in the case of services, or the total of the basic and option quantities in the case of supplies, may exceed 5 years when approved by the chief of the contracting office, provided no statutory restriction limits the term of the contract.

17.206 Evaluation.

(b)(90) The determination and approval not to evaluate an option estimated to exceed \$500,000 prior to contract award (or definitization, if an undefinitized contract) shall be in the contract file, and shall include (see also 15.804-2(b)(90)) either,

(i) An explanation of the specific exemption that can be applied to avoid the data submission and certification requirements of P.L. 87-653, and identification of the pricing technique(s) available to subsequently determine the option price fair and reasonable without submission of certified cost or pricing data or catalog exemption data; or

(ii) A statement that such option price(s) are identified in the solicitation and contract Schedule as "not to exceed" ceiling price(s) subject to later definitization (see 17.208(a)(90)).

17.207 Exercise of options.

(a) The option clause shall require that the contractor be given adequate notice (see FAR 17.207(a)) of the requirement to perform under the option (as a general rule, at least 14 days prior to the last scheduled delivery date).

(c)(90) In addition to those considerations set forth in the FAR, exercise options only if it is determined that:

(1) There is no substantive change in the requirement; and,

(2) The contractor's performance is satisfactory. A record of demonstrated superior performance may warrant additional consideration under buying best value guidelines. (See 15.613-90 and 17.207(e)(90).) Satisfactory performance also includes successful implementation of any support to socioeconomic programs which was evaluated as part of source selection as well as any Mentoring Business Agreements which were proposed and evaluated during source selection.

(d)(1) A new solicitation should not normally be used as a means to determine reasonableness of option prices. Tests of the reasonableness of the option price should generally be made by one of the methods identified in FAR 17.207(d)(2) or (3). Whenever a contracting officer determines that it is necessary to test the reasonableness of the option price by use of a formal solicitation, the contract file must contain a memorandum which briefly explains the reasons for the decision.

(2) The following are examples of factors which may be considered in the informal test of the market and evaluation of the option price(s):

(i) The fact that the option price was evaluated for price reasonableness prior to initial award.

(ii) The relationship of the option price to the price for the initial contract quantity.

(iii) The adequacy of competition at time of initial award and the length of time since the award.

(iv) Changes in the general economy that could affect the contractor's costs.

(v) The results of any market research and analysis efforts (see Part 10).

(e)(90) An additional factor to be considered is the desirability of continuing a successful contractual relationship with a vendor that has demonstrated superior quality and delivery performance. Where the market analysis or survey shows that the item may be available at lower cost, this need not preclude the exercise of the option given a history of superior performance by the contractor. Performance criteria, may be used in determining superior performance and evaluating its importance relative to market price considerations and other factors.

(f) Prior to exercising an option, the contracting officer shall consider the factors at FAR 9.104-1 particularly the contractor's performance under the base contract period and any previous options. A

decision not to exercise the option after considering responsibility -type factors is not a determination of contractor responsibility, and is not subject to referral to the SBA if the contractor is a small business.

17.208 Solicitation provisions and contract clauses.

(a)(90) If the contract includes an option in amount exceeding \$500,000 which was not evaluated prior to award, the contracting officer shall include a clause substantially the same as the clause at DFARS 252.217-7001, Surge Option, providing for definitization of the option before option exercise, except in the event urgency dictates post-exercise definitization.

SUBPART 17.73 - IDENTIFICATION OF SOURCES OF SUPPLY

17.7301 Policy.

In the interest of maintaining supply system, and item integrity, and fostering the spare parts breakout programs, it is essential to know what is being purchased and from whom. It is the policy of DLA to retain the right to require identification of the manufacturing sources of the items purchased. Therefore, refusal of offerors to provide such information when specifically required is a valid basis for rejection of offers.

17.7302 Procedures.

(c) When required, the source of manufacture must be identified. Refusal of offerors to do so precludes a contracting officer from determining the technical acceptability of the item to be supplied. Therefore, the offer cannot be accepted. Additionally, if an offeror furnishes the information but restricts its use on the basis of confidentiality, except as provided in subparagraph (e) below, the contracting officer must advise the offeror that --

(1) It is not DLA policy to make awards with such restrictions or to hold such information in confidence;

(2) In order to be eligible for award, the confidentiality requirements must be removed; and

(3) If such limitation is not removed, the offer may be rejected.

(d) Obvious reasons for not maintaining confidentiality are that it is operationally impractical because the total administrative costs could outweigh savings on the instant purchase. In addition, because of the volume of purchases, it is difficult to guarantee confidentiality, and DLA could be liable for inadvertent disclosure. Finally, it is contrary to DoD efforts to expand competition.

(e) Notwithstanding subparagraph (d) above, there may be instances when award may be beneficial to the Government whether or not the confidentiality restriction is removed. In these instances, prior to award, the contracting officer shall review the validity of the restriction. For example, if the identified manufacturing source is advertised in trade journals, commercial source listings, or is otherwise known to industry and Government, then holding the identity of the manufacturing source in confidence is not appropriate and shall be challenged. If it is determined that the confidentiality restriction is valid, then that information shall be held in confidence.

(f) Accordingly, a solicitation provision substantially as set forth in 52.217-9003 shall be included in negotiated solicitations, except in solicitations for commercial items. (Note: This provision, when used, may not be used as a modification to the provision at 52.217-9002, **Conditions for Evaluation and Acceptance of Offers for Part Numbered Items**.)

(g) It must also be noted that, if there is no provision in the solicitation which requires the offeror to disclose manufacturing/production sources, the offeror may properly conceal those sources in a competitive atmosphere.

SUBPART 17.74 - UNDEFINITIZED CONTRACT ACTIONS

17.7403 Policy.

(a)(90) The contracting officer shall expedite Government and contractor efforts to secure an acceptable price proposal and evaluation

pending and following approval to award a UCA. The chief of the contracting office shall monitor usage and reporting (see subpart 90.8) of UCAs for conformance with regulatory requirements.

17.7404 Limitations.

17.7404-1 Authorization.

The authority in DFARS 217.7404-1(b) to authorize use of a UCA for a non-urgent requirement, exists only where the non-urgently needed quantity should be included and priced coincident to definitization of an urgently required quantity of the item. Authorization to take this action or the actions cited in DFARS 217.7404-1(a) or (c) is delegated, without authority for further delegation, to:

(a) The chief of the contracting office at the DSCs for a UCA to fill a requisition for a backordered or non-stocked quantity requiring heightened management, i.e.:

(i) a Military Service requisition with Issue Priority Designator (IPD) 01;

(ii) a Military Service requisition with IPD 02 or 03; and either an Anticipated Not Mission Capable Supply (ANMCS) or Not Mission Capable Supply (NMCS) indicator in the required Delivery Date field (record positions 62-64) beginning with a "9", "N", or "E" or an OSD/JCS project code (record position 57-59) beginning with a "9".

(iii) a Foreign Military Sale requisition under the Cooperative Logistics Program Support Agreement (CLSSA) with IPD 02 or 03 and an OSD/JCS project code beginning with a "9".

For such high priority UCAs where the not-to-exceed ceiling price does not exceed the simplified acquisition threshold, this authorization is delegable, but not lower than one level above the contracting officer.

(b) The Administrators/Deputy Administrators, Defense National Stockpile Center and ***Defense Automated Printing and Support Center***;

(c) The Commanders/Deputy Commanders of other activities.

The written approval shall document the specific urgency which compels use of a UCA, demonstrate that the restrictions of DFARS 217.7403 are met, and identify the consequences of failure to take such action.

17.7404-2 Price ceiling.

(90) The "not to exceed" definitized contract total price ceiling shall be based on a "not to exceed" unit price included in the UCA for each item (each labor rate, for labor hour or time and materials type UCAs) with the stipulation that in no event shall the delivery quantity be decreased to affect or minimize increased costs to the contractor.

17.7404-3 Definitization schedule.

(90) The definitization schedule shall include milestone dates for receipt by the contracting officer of a price proposal that provides the required cost or pricing data, normally within 30 calendar days following award, and for beginning negotiations.

17.7404-4 Limitation on obligations.

(90) To preserve the DFARS flexibility to increase the pre-definitization level following submission of a qualifying proposal (i.e., one which provides the required cost or pricing data and/or other information the contracting officer deems necessary for price definitization), the contracting officer must keep the obligation level below 50 percent of the not-to-exceed UCA ceiling price until receipt of such proposal.

17.7404-6 Allowable profit.

(90) The chief of the contracting office shall assure conformance with the requirements of DFARS 217.7404-6(a) and (b).

17.7404-90 Other requirements.

(a) Payment limitations. To facilitate timely proposal submission and price definitization, contracting officers should establish initial funding available for interim financing and payments (e.g., progress payments, interim delivery payments (DFARS 232.102-70), public vouchers, and DD250s) consistent with the estimated amounts of contractor expenditures as of the dates specified in the definitization schedule for submission of a qualifying proposal and for price definitization. The contracting officer should subsequently relax or tighten such controls and incentives (e.g., by revising interim billing rates, reducing or suspending progress payments (DFARS 232.503-6), etc.) as necessary and appropriate to achieve timely definitization.

(b) Delivery schedule. Specify a firm delivery schedule, otherwise a "not to exceed" schedule reflecting the Government's minimum needs. A tentative schedule permitting the unilateral contract extension of the delivery schedule shall not be used.

(93) The contracting officer shall identify and include with any delegation of an undefinitized delivery order (BOA, IDC, T&M contract, etc) for definitization by the cognizant ACO, any independent Government estimate ("should cost") that have been performed and found useful for determining price reasonableness, establishing negotiation objectives, and for contract negotiations. The delegation letter should request that the ACO furnish feedback on the utility and effectiveness of the IGE to the Center and to office(s) preparing and furnishing the IGE.

SUBPART 17.75 - ACQUISITION OF REPLENISHMENT PARTS

17.7501 Procurement of parts.

(b)(3) Solicitation Provision.

(i) The provision at 52.217-9002 entitled "Conditions for Evaluation and Acceptance of Offers for Parts Numbered Items" may be used in negotiated acquisitions of replacement parts, components, and assemblies which are identified only by the manufacturer's name, part number, and a brief description. The provision may be used for simplified acquisitions as well as large purchases, provided that the full text of the provision shall be made available to offerors. The contracting officer shall include the standard provision, or one of its alternates when appropriate, in the solicitation, based upon information regarding the availability of data for evaluation provided by technical personnel. The provision should not be used in procurements where technical personnel have specifically advised that for the instant procurement alternate products cannot be evaluated, e.g., restricted source or OEM source controlled items, National Institute for Occupational Safety and Health (NIOSH) items for which necessary testing equipment is not reasonably available, etc.

(b)(4) Evaluation of alternate item offers for spare parts. When the "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" provision is used, procedures shall be established by each DSC such that they will evaluate alternate offers when the savings projected will meet the savings threshold stated in the provision and there is a reasonable expectation that the alternate offer may be in line for award. When the provision is not used, all alternate offers will be evaluated, unless the solicitation has provided information that only the item cited in the procurement identification description (PID) will be acceptable (e.g., restricted source or OEM source controlled items, NIOSH items for which necessary testing equipment is not reasonably available, etc.). DSC procedures shall also provide for prompt notification by the contracting officer to alternate offerors of interim status (when required) and final status of the alternate offer, i.e., approved, disapproved, returned without evaluation. Several other factors should be considered in making a decision to evaluate items prior to award.

(i) Reserved.

(ii) For any purchase, if the time before proposed award does not permit evaluation, and delay of award would adversely affect the Government, then alternate offers may be considered technically unacceptable for the instant acquisition and award made to the otherwise acceptable offeror. The benefits which may accrue to the Government, if the alternate item were accepted, must be weighed against any adverse effects caused by delaying award. Consideration shall be given to requesting expedited evaluation if the benefits are significant.

(iii) The contracting officer may forward alternate offers for technical evaluation that are not in line for award or offers that do not meet the savings threshold if other factors indicate that an evaluation should be performed. While savings may not be evident without further consideration, benefits should not be weighed only against the instant acquisition. Future benefits should be considered as well; for example, projected future savings on high demand items, breaking a chronic sole source situation, etc. The other factors must be cited on the request for evaluation that is forwarded to technical personnel. If a preaward evaluation cannot be performed for offers that meet these criteria, a postaward evaluation will be performed. Offers that do not meet the above factors will be returned to the offeror without evaluation.

(iv) When a potential contractor submits an alternate item for evaluation for which there is no active procurement request, the activity Competition Advocate will determine if the alternate item meets the criteria for evaluation listed for alternate offers in DLAD 17.7501(b)(4)(iii) above. The activity Competition Advocate will provide the status to parties submitting alternate items, and will forward qualifying alternate items to the appropriate technical personnel with the reasons the alternate items should be evaluated. These alternate item evaluations will be tracked according to the time frames set forth in DFARS Appendix E.

(v) When a postaward evaluation is performed, the alternate item offeror will be advised of the evaluation results. The Competition Advocate will maintain a tracking system for postaward evaluations, in order to insure followup with contractors. Technical personnel will perform a postaward evaluation within 45 days of receiving the alternate offer, unless unusual circumstances require a longer evaluation period. After the 45 days have elapsed, followups will be generated by the Competition Advocate every 15 days. If the evaluation must be performed by an Engineering Support Activity, the time allowed for evaluation is 90 days with followups generated every 30 days (after the first 90 days) by the activity Competition Advocate.

(vi) If it is determined that award will be delayed pending an alternate item evaluation, such evaluation request will be forwarded to the appropriate functional element and an estimate made of the time required for evaluation. Upon expiration of the estimated time, inquiry shall be made regarding the status of the evaluation. If the evaluation has not been completed or it is not otherwise imminent, determinations shall be made as to how much longer the evaluation will take and how much longer the award can be delayed. A new suspense shall be established based thereon, or award shall be made immediately if it is not in the Government's interest to further delay the award. Technical personnel are responsible for communication with all parties involved. The decision to hold or proceed with award should not be made until such communication is established and the status of the evaluation has been assessed as accurately as possible. Under simplified acquisition procedures, awards normally should not be held for protracted periods of time unless there are substantial benefits.

(vii) To aid in prioritizing workload, the amount of potential savings or other benefits should be included on any referrals to technical personnel together with any other pertinent factors which would influence the evaluation process.

17.7504 Limitations on price increases.

(a)(2) The thresholds for base price comparison check procedures under SAMMS simplified purchase procedures and local automated procedures shall not exceed 25 percent and \$250, **after adjustments specified in DFARS 217.7504(a)(1).**

(b) The requirement for review and certification to be accomplished before the purchase applies after awards under simplified purchase procedures where the price is not known until after acceptance of the Government's offer. **Further, the** certification to the HCA is required as a notification to management, not an approval requirement, of substantial price increases. The method and frequency of periodic notification and the degree and level of management involvement may vary, depending on such factors as dollar value, nature of the procurement, and extent of competition; however, regardless of the approach taken (e.g., quarterly oral or written brief using a table comparing the numbers of certified buys by percentage ranges of price increase within award value ranges, with the results of prior periods), HCA awareness is required of significant price

increases on a continuing basis. A local focal point (the price analysis branch/element, where one exists) shall compile and provide **local** management **and MMPPP, at least annually**, with information on such usage based on a copy of each certification furnished by contracting officers.

SUBPART 17.76 - CONTRACTS WITH PROVISIONING REQUIREMENTS

17.7602 Contracting requirements.

17.7602-2 Issuance of provisioned item orders (PIOs).

(90) Reserved.

(91) The file shall be documented when the price or cost analysis techniques discussed at 13.106(c)(90)(ii) and (v) are used for award of priced PIOs and definitization of undefinitized provisioned item orders (UPIOs).

(92) If the contract contains a progress payment clause without an exclusion provision for orders with a ceiling price below \$1 million (\$100,000 for small business firms) and/or having a delivery schedule of less than 6 months (4 months for small business firms), a provision precluding such applicability shall be included in all PIOs below these thresholds.

(93) Reserved.

(94) Reserved.

(c) The requirements of DFARS 217.74 and subpart 17.74 shall be met for all UPIOs awarded by DLA contracting offices.

17.7603-3 Negotiating and executing supplemental agreements.

(c)(90) The file shall be documented when the price or cost analysis techniques discussed at 13.106(c)(90)(ii) and (v) are used for the exercise of priced PIOs and definitization of UPIOs.

17.7690 Contracting officer's representative - Provisioning.

Technical personnel at each DSC and additional personnel within that office shall be designated as Contracting Officer's Representative for Provisioning for the purpose of providing technical assistance to offerors/contractors with regard to requirements for equipment support and provisioning for DSC acquired end items/components. Delegation of responsibility shall include authority for actions to be taken by the Provisioning Coordination Office as set forth in DLAD 4100.8, Surveillance of the Contractual Aspects of the Provisioning Cycle in the Defense Supply Centers. For example, the COR for Provisioning is responsible for reviewing purchase request (PR)/MIPR provisioning requirements to ensure compliance with provisioning policy and procedures and proper presentation of provisioning requirements in solicitations and contracts, conducting Pre-Provisioning Guidance and Source Coding Conferences when required by the contract, negotiating reductions in provisioning technical documentation requirements, including recommendations for equitable adjustments in the contract price or delivery terms based on technical provisioning considerations, surveillance necessary to assure receipt of provisioning technical documentation, and notifying the contractor of required corrections (rejection) or acceptance of provisioning technical documentation. The delegation will not include any authority to modify or change the terms of the contract or to make any agreement which will result in an increase in the contract amount or extend the time for delivery of the end items.

17.7691 Reserved.

17.7692 Data pricing, evaluation, and award.

The clause cited at 52.217-9000, Data Pricing, Evaluation, and Award, shall be inserted in solicitations for acquisition of data with end items. The clause shall be inserted in Section M, Evaluation Factors for Award.

SUBPART 17.90 - MULTISOURCE CONTRACTING

17.9000 Scope of subpart.

This subpart prescribes policies and procedures for acquisition *s* of supplies and services from multiple sources **when the coverage at FAR 16.504 for making multiple awards of indefinite-quantity task and delivery order contracts is not used.**

17.9001 Policy and authority.

(a) Provision for making awards to more than one source of supply or service may be made for the following purposes or reasons under the authority described for the respective purpose or reason.

(1) Establishing or maintaining alternative sources. See FAR 6.202.

(2) Industrial mobilization; or engineering, developmental or research capability. See FAR 6.302-3.

(3) Production test. See DLAR 4125.1, Production Testing of DLA Managed Items and FAR 6.101.

(4) Prospective contractor not responsible for entire quantity. See FAR 9.103.

(5) Supply assurance. See FAR 6.101.

(b) Contracting officers shall obtain the advice of local counsel both in acquisition planning and prior to award whenever multisource contracting is proposed on an other than full and open competition basis.

17.9002 Conditions for use.

(a) The conditions for use of multisource contracting for the purposes or reasons described in 17.9001(a)(1) and (a)(2) above are described in FAR 6.202 and 6.302-3, respectively.

(b) Multisource contracting may be used when it is necessary for the purpose of testing under contract, the adequacy and practicability of specifications for a new or modified item to assure that the specification will permit quantity or mass production of quality items within economical production practices, and that the specification does not restrict competition.

(c) When the otherwise low, responsive or technically acceptable offer is from a prospective contractor that cannot be determined to be responsible for the entire quantity on which it offered, award may be made to that offeror only for the portion of the total requirements for which the offeror can be determined responsible. In such cases, the contracting officer may award the balance of the total requirements or that portion of the balance of the total requirements to the next low, responsive or technically acceptable offeror(s) to the extent that such offeror(s) is determined to be responsible, provided that the terms and conditions of the solicitation do not limit the Government's right to make multiple awards and the prospective contractor(s) does not condition its offer to preclude such awards. (Note that when the provision at FAR 52.214-10, Contract Award - Sealed Bidding, is included in IFBs, as required by FAR 14.201-6(e)(2), the Government has the right to award less than the total quantity solicited. Bids that take exception to this provision are not responsive. When the provision at FAR 52.215-16, Contract Award, is included in RFPs, as required by FAR 15.407(d)(4), the Government has the right to award less than the total quantity solicited. Offers that take exception to this provision are not technically acceptable.)

(d) Provision for making multiple awards may be made to ensure the availability of supplies in business risk situations. A reasonable basis for making multiple awards in such situations must exist, for example, the record shows a history of poor performance (unrelated to Government caused delay) for a critical item due to a contractors' or inadequate production capacity; or the specification is complex or difficult and requirements must be satisfied in a relatively constrained timeframe. To adequately justify making multiple awards in such cases, the contracting officer must demonstrate that awarding less than the total requirements to more than one source will aid in ensuring that the prior contractor performance problems will not recur. Further, the benefits of having more than one source under contract for the same supplies or services at the same time should outweigh any anticipated increased prices that result from the award of more than one contract.

17.9003 Limitations on use.

(a) When provision for multiple awards is made for the purpose of production testing a specification:

(1) The Government's minimum need must be principally for the purpose of determining that an item of supply can be manufactured to the specification on a production basis. Obtaining delivery of supplies is a secondary purpose.

(2) The quantity to be awarded to any contractor should, normally, be limited to the minimum economic production quantity required to ensure an adequate production test.

(b) When multiple awards are made due to the fact that the low, responsive or technically acceptable offeror cannot be determined to be responsible for the entire quantity solicited, the responsibility determination made on such offeror must reasonably describe the rationale for determining that award of more than the proposed award quantity to such prospective contractor would be beyond that prospective contractor's production or service capacity.

(c) When provision for multiple awards is made to ensure the availability of supplies in business risk situations:

(1) The contracting officer must adequately document a reasonable basis for making multiple awards that: supports the Government's need to make multiple awards to obtain the requirements when needed; explains how awarding more than one contract will reduce or eliminate past performance or supply availability problems; and describes the benefits of obtaining more than one source that outweigh any anticipated increases in prices resulting from the award of more than one contract (see 17.9002(d) above).

(2) The solicitation must permit award of the entire requirement to one offeror.

(3) The solicitation should include a provision reserving the Government's right to make multiple awards to other than the lowest priced offerors.

(4) Sealed bidding cannot properly be used because the solicitation provides that award may not be made solely on the basis of lowest price.

(5) The contracting officer must document, after receipt of offers and prior to award, that a reasonable basis to award to multiple sources exists.

(6) The contracting officer should make provision for a degree of competition, when practicable (e.g., low offeror will be awarded 60 percent of the total requirement, whereas the second low offeror will be awarded 40 percent of the total requirement).

SUBPART 17.91 USE OF PUBLIC MANUFACTURERS

17.9100 Scope of subpart.

This subpart prescribes policies and procedures for the solicitation of offers from, and the subsequent issuance of project orders to, public manufacturers. This subpart does not address procedures for conducting public-private competition. Department of Defense Instruction 7220.1, Regulations Governing the Use of Project Orders, provides the primary guidance for the issuing and acceptance of project orders. This subpart provides additional guidance.

17.9101 Definitions.

"Basic Project Order Agreement (BPOA)" is an agreement between a Defense Supply Center and a public manufacturer that establishes the basic terms and agreements for any subsequent project orders placed against that BPOA, whether issued by the same Center, or another Defense Supply Center. The BPOA, in itself, is not a project order.

"Project Order" is a specific, definite, and certain order issued under the authority of 41 U.S.C. 23 for the manufacture of materials, supplies and equipment, or for other work or services which, when placed with and accepted by a separately managed and financed Government-owned and operated establishment, serves to obligate appropriations.

"Project Order Officer" is the contracting officer who issues a project order on behalf of a Defense Supply Center. The project order officer is responsible for ensuring that all appropriate procedures are adhered to, both in the determination to solicit a public manufacturer, and in any subsequent solicitation, project order issuance, and "post -award" administration.

"Public Manufacturer" is a Government-owned, Government-operated establishment, including, but not limited to, arsenals, shipyards, manufacturing or processing plants or shops, overhaul or maintenance shops, research and development labs, ordnance plants, or testing facilities.

"Public Sector Bidders List (PSBL)" is a bidders list consisting of the names and CAGE codes of public manufacturers available for use by the Agency, the Federal Supply Classes they are capable of supporting, and identification of part numbers/National Stock Numbers of items previously manufactured.

"Rough Order of Magnitude (ROM) Estimate" is an informal request for approximate cost, price and availability information from a public manufacturer. The ROM estimate is used to determine whether the public manufacturer can meet agency requirements for an item, without burdening the public manufacturer with the cost of preparing a detailed response.

17.9102 General policy.

(a) The Defense Logistics Agency relies on the private sector as the primary source of supply for required material and services. However, public manufacturers will be solicited at the first indication that the private sector cannot meet Agency requirements, or where using the public sector meets the intent of laws providing direct access (e.g., Army Arsenal Act (10 U.S.C. § 4532)).

(b) Contracting offices shall use similar business systems and practices for public and private sectors. Contracting personnel are responsible for issuing the Rough Order of Magnitude (ROM) Estimate request, Request for Quote (SF-18) and Project Order (DLA Form 531); entering the

project order into the DLA Contract Action Reporting System (DCARS); and performing post award functions. Supply, Technical, and Quality functional activities will be the same as used for private sector acquisitions to the maximum extent possible.

(c) Contracting officers shall ensure that no more or less stringent quality assurance requirements are imposed upon public manufacturers than are imposed upon private sector sources. The nature of the item required should dictate the quality assurance requirements. For example, if a certificate of conformance or MIL-Q-9858A was required from the private sector manufacturer for an item (or for an equivalent item in the case of a first time Agency acquisition), the same will be required from the public manufacturer. Similarly, if DCMC were being tasked to perform source inspection at a private manufacturer's plant, it will provide the same service at the public manufacturing facility.

17.9103 Conditions for use.

Public manufacturer(s) should be solicited when:

(a) No responsive/technically acceptable offers from a responsible private sector source are received in response to a solicitation. The determination that the offer is unacceptable requires contracting officer consideration of several factors, including the urgency of need, the potential that an acceptable agreement could be obtained through negotiations, and the possibility of breaking out non-urgent quantities for a private sector award. A private sector response may be considered unacceptable if any of the following unresolvable conditions exist:

(1) The offeror does not propose to meet the required delivery date (RDD). The need date, not the lead time of record, should be used to calculate the RDD (solicitations should not have delivery schedules stated in terms of "after receipt of order" (ARO) if the buy is for a non-stocked item filling a customer requisition or other forecast demands do not exceed available stock or "due in" may be issued with the delivery date stated in terms of ARO to facilitate maximum private sector delivery schedule latitude.

(2) The proposed price is considered unreasonable. Caution must be exercised to ensure that a project order is not subsequently issued at a price exceeding the price found unreasonable in the private sector. However, the contracting officer may determine that it is in the government's best interest to issue a project order under these circumstances if: (a) the public manufacturer's price includes one-time startup costs, (b) there is a recurring demand for the item, and (c) subsequent prices for the item are anticipated to be lower than the unreasonable private sector price. Such determination must be in writing and approved by the head of the contracting activity.

(b) If an item has never been acquired from the private sector as a result of being designated for public manufacture under the authority of the Army Arsenal Act (10 U.S.C. § 4532) or similar Military Department authorities, the contracting officer may continue to rely exclusively on a public manufacturer as the source of supply. This situation will exist for a large number of items to be acquired as Numerical Stock Objective (NSO) or "insurance" items.

17.9104 Limitations on use.

Project orders may be issued to public manufacturers for the purpose of satisfying Agency requirements only to the extent that the public manufacturer already has the capability to perform the work. DoDI 7220.1 states that the activity receiving the project order "must be substantially in a position to manufacture" the item. For example, if a certain public manufacturer had no machining capability, a project order could not be issued which would require it to develop or acquire such a capability. The contracting officer should review DoDI 7220.1 to ensure that other applicable restrictions are met.

17.9105 Solicitation procedures.

When an applicable condition of paragraph 17.9103 is satisfied, the following procedures shall be used in soliciting public manufacturers:

(a) SF-18, Request for Quote, shall be used to solicit public manufacturers.

(b) A Rough Order of Magnitude (ROM) estimate should be requested, rather than a firm proposal, when the public sector estimate is required only to assist in the acquisition decision making process. For example, in cases where no procurement or cost history exists, and the manufacturing task appears complex, a ROM may be requested to gain a rough estimate of cost and delivery schedule. Item managers may defer acquisition for some items if cost estimates are excessive in relation to demand or criticality. The public sector bidder should be informed as to the potential use of the ROM. Public sources should not be solicited for a firm proposal unless there is a high probability that a project order will be issued. Proposal preparation is costly, and superfluous requests for firm proposals may result in a reduction of offers from public manufacturers. Following review of the ROM estimate, if it is determined that the public

manufacturer is likely to be capable of meeting Agency needs, a Request for Quote (SF -18) should be issued to obtain a firm proposal.

(c) Public manufacturers may be solicited concurrently with private sources if there is reason to believe that acceptable offers will not be submitted by the private sector. The purpose of concurrent solicitation is to reduce lead time, it is not a public-private competition. Either a Request for Quotations or a ROM estimate may be requested from the public manufacturer, depending on the likelihood of issuing a project order. The public manufacturer must be made aware of the fact that the private sector is being solicited concurrently, and that the private sector will receive the award if an acceptable offer is received (see 17.9103).

(d) All public manufacturers that have indicated an interest in the Federal Supply Class as shown in the Public Sector Bidders List (PSBL) should be solicited, except in the following circumstances:

(1) When, as shown in the PSBL, a public sector manufacturer has made the exact item in the past, solicitation may be limited to this manufacturer.

(2) When an acquisition is being made for an item designated solely for public manufacture (see 17.9103(b)), only public manufacturers from the "requiring Service" shall be solicited. For example, Navy shipyards or depots shall not be solicited for the manufacture of an item with an Army system application designated for public manufacture pursuant to the Army Arsenal Act (10 U.S.C. § 4532), regardless of their capability to manufacture the item.

(e) After an item has been acquired from the public sector for the reasons delineated in 17.9103(a), or if previous solicitations of the private sector have been unsuccessful, there is no requirement to resolicit the private sector prior to soliciting public manufacturers for subsequent requirements. A Commerce Business Daily notice (see FAR 15.404 and 5.205(c)) shall be published annually to solicit private sources interested in furnishing items that have been supplied by public manufacturers. The contracting officer shall ensure that viable potential sources identified through the CBD notice are solicited for future requirements. In addition to the CBD, the publication of notices in trade publications, industry journals, etc., is encouraged as a method of locating potential sources.

17.9106 Evaluation of Public Manufacturer Offers.

Public manufacturer offers shall be evaluated for project order issuance in the same manner as private sector offers.

17.9107 Assignment of project orders.

DoDI 7220.1, Regulations Governing the Use of Project Orders, provides the primary guidance for the issuance and acceptance of project orders. The following is provided as implementing guidance for issuing Agency project orders to public manufacturers:

(a) Project orders will be issued on DLA Form 531. The contracting officer shall execute block 9c, Project Order Officer signature block.

(b) The establishment of a Basic Project Order Agreement (BPOA) is the preferred method for establishing the common terms and conditions for project orders issued by DLA contracting offices to public manufacturers. MMPRT shall designate lead Supply Centers to execute BPOAs with designated public manufacturers. Following the execution of a BPOA, the lead Supply Center shall provide a copy of the BPOA to all other DLA Supply Centers. This BPOA shall be used by all DLA Supply Centers. To the greatest extent possible, Centers should refrain from deviating from the content of the model BPOA, promulgated by the 29 November 1993 AQP policy letter entitled "Model Basic Project Order Agreement (BPOA)", in securing a final BPOA with public manufacturers. In order to standardize business relationships and procedures, all BPOAs should share a common baseline. Rather than negotiating a widely disparate number of BPOAs, Centers should emphasize to public manufacturers the flexibility and tailoring that can be incorporated into individual project orders.

(c) Procurement Instrument Identification Numbers (PIIN). PIINs shall be assigned to BPOAs and project orders under BPOAs as follows:

(1) BPOA: Center FCIM DODAAC + FY + "G" + four digit serial number. Example - "SP0499-94-G-0001" (DSCR).

(2) Project orders issued under a Center's own BPOAs: PIIN of appropriate BPOA + four digit serial number. Example - "SP0599-94-G-0001-0001" (DISC project order under a DISC BPOA).

(3) Project orders issued under another Center's BPOAs: PIIN of appropriate BPOA + two character Center prefix from DFARS Appendix G + two digit serial number. Example - "SP0799-94-G-0004-TW01" (DPSC issuing a project order under 17.9108 Administration of project orders).

(a) Defense Contract Management Command (DCMC) support. In the event that a project order requires DCMC to provide quality assurance, a copy of the project order shall be provided to the applicable Defense Contract Management Command (DCMC) Office at the time of issuance.

(b) Use of data in project orders.

(1) In cases where the Government has obtained unlimited rights to data, it may be used without restriction to manufacture the item.

(2) In those cases where Government rights are limited/restricted, those limitations/restrictions must be reviewed to determine whether production of the item by public manufacturers to meet Agency requirements is permitted. When appropriate, contracting officers should aggressively pursue the right to use the data by asking for permission to use the limited/restricted rights data either free of charge or for a reasonable fee.

(3) In some cases, the Government may need to use certain kinds of proprietary data for which it does not have rights in order to meet mission requirements. Depending on the data and the circumstances involved, this may be done, although it may also result in claims requiring resolution before the U.S. Court of Federal Claims (e.g., 28 U.S.C. § 1498). The potential for a claim and the amount of the claim should be weighed against mission needs before deciding to proceed with the use of such data. Counsel should be consulted in all such situations.

(c) Reporting.

(1) Project orders issued to the public sector shall be recorded in the DLA Contract Action Reporting System (DCARS). To report these actions on the DD Form 350, code the form the same way contract award DD Form 350s are coded, except assign code "4" to Block B7, Type Obligation.

(2) Public manufacturers' quality, cost and schedule performance shall be tracked using the same Automated Best Value **System** (ABVS) system used to track private sector companies. This information shall be used when evaluating public manufacturers for project orders.

SUBPART 17.92 - REOPENER CLAUSES

17.9201 General.

(a) A reopener clause is a special contract provision which creates a right for an equitable adjustment in the contract price at a specified time or due to the occurrence or non -occurrence of an event or contingency of the type specified in FAR/DLAD 31.205 -7(c)(2).

(b) A reopener clause provides a means of achieving an equitable resolution of the treatment of a significant contingent cost during both the initial pricing of a contract as well as at any time an equitable adjustment to such price is called for under the provisions of the clause. However, its use requires deliberate care to avoid a shift in risk from the contractor to the Government. Consequently, it should be used only in extraordinary circumstances involving high dollar value procurements (i.e., rarely less than \$500,000) where the uncertainty associated with particular cost element(s) substantially impacts the contract price.

(c) Circumstances in which its use may be appropriate include, but are not limited to, the following:

(1) The price reasonableness of one or more subcontracts representing a substantial portion of the prime contractor's proposed price cannot be determined prior to award of the prime contract for such reasons as:

(i) The prime contractor's inability to obtain subcontractor cost or pricing data timely (FAR 15.806-2(e));

(ii) An adequate cost/price analysis was not performed by the prime contractor; or,

(iii) Adequate field report(s) were not received prior to conclusion of negotiations.

(2) A Forward Pricing Rate Agreement (FPRA) or Recommendation (FPRR) (FAR 15.809) is not achievable because of uncertainties having a significant impact such as:

(i) Supporting contractor budgetary data was not submitted;

(ii) A substantial portion of the business base has not yet materialized; or,

(iii) A potential for purchase, merger, or sale of part of a contractor's operations exists.

(3) The price impact of a change in a contract requirement, term, or condition made during negotiations is significant but cannot be reasonably quantified and resolved prior to award.

(4) The offeror's estimating system contains significant deficiencies (DFARS 215.811-70(g)(2)(vi) and (3)).

17.9202 Procedures.

When the contracting officer documents that use of a reopener clause is the most appropriate means of overcoming a contingency (see 31.205-7(c)(2)(90)(v)) that will significantly affect the pricing of a contract, as a minimum, the following should be accomplished:

(a) Request the field ACO provide a recommended clause for those cases in which the DCMC recommended its use. In other instances, contact the local cost/price analyst and the field ACO, as appropriate, for assistance in developing and/or modifying a reopener clause;

(b) Query the field ACO, as applicable, regarding the adequacy of the contractor's accounting system to provide all necessary cost or pricing data in the form required to price the adjustment, and obtain a review of the adequacy of the accounting system if necessary;

(c) Obtain, as necessary, cost or pricing data applicable to the cost element(s) and markup factors, to establish the base level in the clause from which adjustment will be made, and ensure such data has been verified;

(d) When the weighted guidelines method is used, the profit objective otherwise developed should reduce the value for contract type risk (DFARS 215.971-3(d)(4)(iii)), and the values for management and cost control criteria under the performance risk factor when use of the clause is due to an inadequate analysis of the subcontractor's proposal by the prime contractor (DFARS 215.971-2(e)(3)(i)(E) and (f)(3)(iii));

(e) Prepare a proposed schedule of calculations for each affected CLIN which identifies each specific rate, factor, element of cost, profit, etc., to be covered by the reopener clause; and explicitly describes or provides an example of the precise methodology to be used to calculate any resulting price adjustment. Consider whether it is appropriate to retroactively apply a price, as subsequently finalized, to items already delivered on time and to late deliveries.

(f) Obtain legal review for sufficiency and consistency with other contract clauses;

(g) If the clause is to provide for an upward adjustment, notify the local budget office of the necessity to commit funds over and above the contract price to the amount of the ceiling established, or obtain a confirmation from the requiring activity that funds are available and have been set aside) to cover the potential increased obligation (in the event the award is funded by a Military Inter-departmental Purchase Request);

(h) If use of a locally developed clause or one of the clauses at 17.9205 is contemplated on a modified basis, provide an advisory copy of the draft reopener clause, after completing steps (a) through (g) above, to the local contract policy office for review.

(i) If the modifications to one of the clauses at 17.9205 exceed minor changes and substantially alter or eliminate any of the provisions of the clause, or if a local clause is used, promptly provide a facsimile copy of the draft clause to Headquarters DLA, MMPPP.

(j) Incorporate the amounts and methodology reached through preaward discussions/negotiations with the contractor, in a document executed by both parties which is made an attachment to the price negotiation memorandum (PNM). Absent such agreement, calculations supporting the contracting officer's interpretation of negotiations should be incorporated in the PNM. (NOTE: Because such information may be considered confidential by the contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract.); and

(k) Indicate in any letter of delegation for contract administration that the award contains a reopener clause. Advise the field ACO of any awards retained for local administration which will be affected by a prospective FPRA/FPRR, to assure the required information will be furnished timely.

17.9203 Contract requirements.

Incorporate the cost principles and procedures in FAR Subpart 31, for use as the basis for pricing any adjustment under the reopener clause, and the clauses at FAR 52.215-23, Price Reduction for Defective Cost or Pricing Data - Modifications, FAR 52.215-25, Subcontractor Cost or Pricing Data - Modifications, (if applicable), and FAR 52.215-2, Audit - Negotiation.

17.9204 Clause requirements.

A reopener clause shall, at a minimum, incorporate the following:

(a) A title clearly designating it as a reopener clause;

(b) A clear statement of purpose;

(c) A clear identification of the items, amounts, event triggering the reopener procedure, and the responsibilities and rights of the contractor and the Government, including the requirement for certified cost or pricing data, and applicability of the Disputes clause (except for the circumstances in 17.9204(d)(iii)), as specified in DFARS 215.811 -70(g)(3)(i)-(iv);

(d) A clear statement of the methodology for pricing any adjustment, in the following order of preference:

(i) A preestablished pricing formula which precludes the need for further negotiations;

(ii) If the nature of the contingency is such that its price impact can only be anticipated to fall within a broad range of prices vice one or several alternative price outcomes, the clause may identify the range and specify that the amount for that cost element may be revised within such range through negotiations. A pricing formula or methodology would be used to apply appropriate markup factors from the original contract price negotiation;

(iii) If the nature of the contingency is such that its price impact cannot be anticipated to fall within a broad range and/or original price negotiations did not involve cost or pricing data, the clause may instead specify that the parties will enter into good faith negotiations under the clause and may include a "walk-away" option terminating performance a specified number of days following receipt of written notice by either party in the event of a failure to agree.

(e) To minimize excessive obligation of funds and the potential for substantial over or under-payment, if there is reason to believe one or others, then the amount corresponding to the most likely contingency should normally be incorporated as the value of the interim cost element when establishing the contract price. If all alternatives are of equal likelihood, then a value based on a "best estimate" should normally be used. It may also be appropriate to provide for a price adjustment whenever information indicates, prior to the scheduled time established in the clause for an adjustment in the contract price, that there may be a significant variance from the anticipated finalized price;

(f) A provision for a downward and/or upward adjustment as appropriate (see 17.9104(e)). An exception is authorized only when necessary to achieve final agreement on price. For contracts allowing an upward adjustment above the contract price, establish a firm, not to exceed ceiling, on an aggregate basis (and per unit basis if applicable), above which no price adjustment shall be made;

(g) The method of adjusting any option quantity/period prices, if any, which may result from operation of the clause;

(h) If the contract is not subject to the Cost Accounting Standards (FAR Part 30), the treatment of accounting system changes which impact the price adjustment contemplated by the clause; and

(i) A contractor certification that the award price does not include any amount for the specified contingency except as provided for in the clause.

17.9205 Contract clauses.

The reopener clauses listed below are available for use in negotiated contracts only after an advisory copy has been submitted and reviewed in accordance with 17.9202(h):

(a) Reopener clause - Cost of specified direct materials/other direct cost items (52.217 - 9004); and

(b) Reopener clause - Pending indirect rates proposal (52.217-9005).

SUBPART 17.93 READINESS AND SUSTAINABILITY (R&S)

17.9300 Background.

The primary mission of DLA is to support the warfighter in peace and war. Readiness and Sustainability (R&S) are the two most essential components of military preparedness and are critical to the execution of U.S. military strategy. DLA's unique Federal role as a Combat Support Agency makes it directly responsible for the timely supply of battle-critical consumable material to the CINCs and Unified Commands in support of their operational requirements. We must be able to meet our customers' readiness, sustainability, and weapon system acquisition requirements. This requires that we anticipate, plan, and satisfy their needs during peacetime, contingency operations, wartime, or other crises such as operations in support of humanitarian assistance or natural disasters. This is what sets us apart from our competition; consequently,

readiness and sustainment planning must be a primary consideration for all of our material management, resource investment, and acquisition strategies.

DLA and the Services are required to maintain the minimum R&S requirements necessary to fight and win two nearly simultaneous Major Regional Conflicts as set forth in the Defense Planning Guidance. Our ability to effectively respond to these requirements must be at the core of everything we do. Traditional strategies to support R&S requirements need to be augmented with business practices and strategic plans. As we continue to downsize, reduce inventory, and employ new business practices, contracting personnel must understand and facilitate the linkage between our national industrial infrastructure and our ability to meet readiness and sustainment needs. There is an intrinsic tie between our ability to reduce our dependence on Government owned inventory through use of commercial business practices that reduce logistic response time and our ability to meet readiness and sustainment goals. As we reduce lead times and optimize our use of industry capabilities and national inventories, we will be better able to respond to out-of-stock and spike in demand situations without disrupting supply support to our customers. In some cases, we will also need to identify programmatic and other intervention actions necessary to meet surge demands for critical items required by the Services and the CINC's/Unified Commands. This concept is in line with our Buy Response Vice Inventory (BRVI) thrusts to utilize industry based solutions to satisfy peacetime requirements and readiness requirements to the maximum extent possible.

Therefore, in our reengineered business practices we must develop surge capability mechanisms that employ commercial business practices for critical war items to respond to unpredictable demand. These strategies must also instill confidence in our customers that the Agency can provide timely and cost effective support, and be responsive during an emergency or wartime situation. Each acquisition plan should describe processes for expanding long-term business arrangements which (1) ensure that they reflect their customers' identified R&S requirements, and (2) provide for war readiness to be embedded in every new business practice and investment strategy to ensure those requirements are supported to the maximum extent possible. Acquisition plans may also need to address the fact that industrial capabilities to meet readiness and sustainment requirements may need to be augmented by other alternatives such as investment in contractor-managed inventory or traditional depot support.

17.9301 Policy.

Developing surge capability mechanisms that employ commercial business practices for obtaining critical war items ensures that the Agency can provide timely and cost-effective support during an emergency or wartime situation. Each DLA field activity should work with its customers to identify their R&S requirements, provide for war readiness in every new business practice and investment strategy, and establish long-term business arrangements that ensure those requirements are supported.

17.9302 General Procedures for R&S Acquisition Strategies.

The contracting officer, with assistance from the acquisition planning and industrial preparedness staff, is responsible for identifying items with critical applications or surge requirements essential in wartime or emergency. The approach in developing and using R&S strategies should be tailored to the profile of the item, industry, and customer requirements, and consider their combined impact on the current and future R&S posture. In order to maintain responsive customer support to surge requirements, the contracting officer shall consider the following in the acquisition planning, solicitation preparation, and contract negotiation stages of the procurement:

- a. Reviewing all items to determine those which may have critical applications and surge requirements and are considered essential should a wartime situation or other emergency arise.
- b. Adding appropriate language and evaluation criteria for industrial capability in support of readiness objectives as an evaluation factor in acquisitions covering critical items.
- c. Reviewing all contracts or orders for warstopper items, including those with sole source and mandatory sources (i.e., UNICOR, NIB, NISH) to ensure capability exists to meet increased mobilization demands.
- d. Intervention actions that require cost effective programmatic solutions such as investment in contractor maintained rolling inventory and/or production capability.
- e. Considering specialized contracting concepts, initiatives, and strategies. Examples are outlined below:

(1) As the depot system diminishes, we must tailor logistics support to best meet the warfighter's needs. We must take advantage of commercial capabilities and practices and rely more on contractors to maintain and manage certain quantities of essential items. These would include items that would have high wartime "surge" demand that could not be covered under normal commercial business and inventory management practices and would require a "bubble in the pipeline" until industry could increase production quantities. Accordingly, consideration

should be given to rolling inventory of raw or semi-finished long lead material, inventory sharing agreements with a contractor's commercial customers, stock rotation contracts if obsolescence is a problem and other forms of Vendor-Managed Inventory (VMI) arrangements. Under the VMI scenario, we can take advantage of the contractor managing limited inventories or sharing national inventories with his commercial customers as a means to meet spikes in demand.

(2) After review of the items discussed in paragraph a. above, we may determine that an essential defense industrial capability is endangered. Accordingly, we may need to take industrial base intervention measures to protect the endangered essential defense capability. This entails determining the relationship between the endangered capability and our need for it (including an assessment of the costs of intervention) and, if appropriate, taking action to prevent losing it. These actions may include the use of directed (c)(3) buys for availability of domestic sources. Another example is the use of an Industrial Base Maintenance Contract (IBMC) which is used to assure the availability of critical defense unique industrial capability and/or processes. This innovative contracting tool achieves two objectives: (1) the manufacturer can maintain the requisite technical expertise and production facilities; and (2) the Government retains the ability to obtain battle critical items on short notice. The contract allows for quick response in the event of unplanned contingency actions despite downsizing and reduced funding.

(3) When appropriate, prepositioned government furnished equipment (GFE) may be used as a means of augmenting contractor's production capacities in order to meet contingency requirements for critical items. This is appropriate when industry is unable or unwilling to invest in capital equipment due to diminishing peacetime requirements. Provision of GFE should also be considered as a means of disseminating dual-use technology to industries supplying critical items to facilitate their cultivation of commercial business. Storage and Maintenance agreements should also be negotiated to facilitate contractor maintenance of the GFE in their possession.

(4) Continuous market and sector studies of endangered capabilities must be performed to determine if there are any potential domestic, and, if appropriate, foreign sources who can supply comparable items and provide logistical support. The use of dual use technologies, coupled with production sharing business arrangements with a producer's commercial customers, should be explored as an alternative to maintaining defense unique production capabilities. The goal is to keep critical defense production capability with surge capacity at the lowest possible cost and without having to buy high peacetime quantities to maintain an industry.

f. Fostering teamwork and cooperation to assure effective acquisition planning is accomplished and our contracts contain the appropriate terms to assure our R&S posture is sufficient to meet all contingencies. Areas to consider during acquisition planning include the suppliers' ability to transition from commercial to Government work and utilizing Broad Agency Announcements (BAAs) to request technology advancements to enhance our R&S posture. Planning requires cooperation and a commitment that the offices of Contracting and Production (**or Acquisition**), Material Management, Distribution, Electronic Commerce, and the Commodity Business Unit Chiefs and their personnel will all work together to achieve this goal.

g. Using BAAs as a tool to elicit innovative/creative concepts from the private sector to maintain readiness in a commercial environment.

h. Negotiating third party shared production agreements or shared inventory agreements with manufacturers and producers providing critical items and their commercial customers.

i. Negotiating contractually binding Planned Producer commitments that incorporate the amount of production firms are willing and/or able to allocate during contingency, wartime or other emergency situations. These agreements should be used in conjunction with (c)(3) buys for the purposes of maintaining a critical mobilization base.

j. Investment in "surge" capability may be necessary for critical items with a high wartime to peacetime demand when a contractor is unwilling/unable to maintain needed capacity and/or inventory to meet the wartime requirements. Analysis and a business case for each arrangement will be required clearly showing the benefit of investment in industrial base capability or vendor managed inventory (VMI) in lieu of government held war reserve materiel. More importantly, these actions must be programmed into the industrial preparedness "Warstopper" accounts to support DLA wartime requirements. These actions will require coordination with the industrial support and preparedness personnel and Chiefs of Contracting offices within the Center and at headquarters DLA. Close coordination with appropriate materiel management personnel and Service staffs will also be required. These actions must also be incorporated into the individual ICP business plans clearly laying out the acquisition strategy and business arrangements with yearly costs through the POM cycle. The strategy and approach developed for surge support should be a coordinated and integrated approach to meeting customer wartime "surge" demand.

17.9303 Solicitation Preparation.

The following concepts shall be considered for use in all acquisitions:

(a) Using the offeror's ability to provide R&S/surge requirements as an evaluation factor under best value buying methodology (see DLAD 15.605(b)(2)(90)). In section L, the offeror will be requested to submit an R&S plan and explain how R&S surges will be handled under the DFARS surge option clause and/or any other surge provision/clause developed. Section M should set out the appropriate evaluation criteria. Delivery time frames, the quantities of emergency items the offeror can produce, how quickly the offeror can increase production, and R&S costs are examples of those R&S/surge related elements which can be evaluated.

(b) Adding appropriate R&S/surge provisions. One approach is to establish a separate schedule in the solicitation to include R&S/surge requirements. The schedule may include preplanned surge quantities, estimated quantities or some type of minimum/maximum quantity range. If appropriate, include the Government's delivery requirements or have the offeror provide a monthly delivery schedule showing his/her maximum ability to surge. Contracting officers must also consider the cost of R&S and develop pricing mechanisms to determine this cost. When possible, negotiate contract line items and options which will be obligated only when ordered or exercised. This may be in the form of separate line items and unit prices (or distribution fees under a prime vendor concept) to cover R&S/surge quantities. Contracting officers may also need to consider allowing an extra charge for stocking additional quantities to meet potential R&S requirements. If feasible, prices for R&S/surge quantities may be solicited with the basic award quantity. If a long term vehicle is being used; however, it may be more prudent to solicit and negotiate firm prices (or initially request ceiling prices to be negotiated later) and delivery terms when the emergency requirements materialize. Include the surge option clause (DFARS 252.217-7001) in the solicitation. State that any quantities increased as a result of these provisions are over and above any base and option term quantities awarded/ordered under the basic contract. These provisions must legally bind the offeror to deliver these R&S/surge requirements should they be needed. Accordingly, any R&S/surge provision developed by the contracting officer must be coordinated with the local Office of Counsel and the local contract policy office.

(c) Using the Surge Option Clause (DFARS 252.217-7001) or a modified version tailored for the circumstances in supply contracts for critical items, including items in indefinite delivery contracts from which prime vendors may order. The DFARS surge option clause may be used for planned and unplanned items where R&S is a factor. Any modified version of the clause shall be coordinated with the local Office of Counsel and the local contract policy office.

(d) Adding the use of electronic commerce/electronic data interchange (EC/EDI) into solicitations as part of the Statement of Work (SOW). Develop evaluation factors to evaluate offerors' EC/EDI capability. Consider incentivizing the use of EC/EDI tools which will reduce paperwork and save time by transmitting orders, invoices, shipping notices and other documents electronically.

(e) Incorporating language (e.g., price and delivery terms) covering short term emergencies such as an urgent request from a hospital for a drug item.

(f) Adding provisions to proposed Prime Vendor, (and agile manufacturing/Quick Response solicitations) and, if appropriate, any other proposed solicitations for critical items, to perform periodic stress tests to evaluate the contractor's ability to surge. The stress test can involve actual surge orders and deliveries of items. The test can also be conducted as part of war planning exercises with production personnel developing the exercise scenario and assessing the contractor's ability to perform under those circumstances. Acquisition personnel shall also consider amending current solicitations or modifying existing contracts or shared production agreements to add stress tests where appropriate.

(g) Including provisions in all existing Prime Vendor and Quick Response contracts including their Distribution and Pricing Agreements (DAPAs, subcontracts or other sources of supply arrangements) advising agreement holders that their support may be needed during a wartime situation or other emergency.

(h) Using Indefinite Quantity Contracts (IDCs) is consistent with the Agency's overarching strategy and other benefits. Add language to the solicitation stating that in case of an emergency and/or mobilization, the Government may, at its discretion, as specified in the surge option clause in the contract, increase the maximum IQC ceiling to a specific quantity or dollar value.

(i) Using multi-sourcing techniques to assure maximum supply support. Multi-sourcing for readiness, or the readiness planning to procure from one or more than one source can provide sufficient quantities for emergency and wartime requirements.

(j) Incentivizing contractors to reduce their dependence on Government contracts through expansion of commercial business enterprise while maintaining the capability to deliver military requirements. One approach is to make defense conversion an evaluation factor, giving

preference to those offerors who have made or will make effort to eliminate their dependence on Government contracts and develop and/or expand their commercial base of customers.

(k) In Section L, requiring offerors to provide a description of their network of suppliers, subcontractors, distribution and asset visibility systems and having them indicate what safeguards are built into the system to preclude disruption of deliveries. Possibly provide examples of actions (e.g., labor disputes or natural disasters) which could cause disruption in delivery and have offerors explain how they would continue to meet contractual requirements in spite of those disruptions.

17.9304 Reporting requirement

A Reports Control System (RCS) number has been established for reporting the number of shared production agreements in place each quarter. The RCS number is DLA(Q)2609(MM). Quarterly reports are due to HQ DLA, ATTN: MMPON, by the 10th working day of the month following the end of the quarter.